

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL
NEW DELHI**

Dated : May 12, 2011

Petition No.358(C) of 2010

Maha Laxmi Cable Network

...Petitioner

Vs.

Zee Turner Ltd.

...Respondent

BEFORE:

HON'BLE MR. JUSTICE S.B. SINHA, CHAIRPERSON

HON'BLE MR.P.K. RASTOGI, MEMBER

For Petitioner : Mr.Vineet Bhagat & Ms. Neha Jain,
Advocates

For Respondent : Ms. Pratibha M. Singh, Mr.Tejveer Singh
Bhatia, Mr. Vadivelu
Deendayalan, Advocates

J U D G M E N T

S.B. Sinha

1. The petitioner herein is a multi service operator. The respondent is a content aggregator of several channels.

The parties hereto entered into a Memorandum of Understanding (MOU) pursuant to an order passed by this Tribunal on 28.5.2010 in Petition No. 167(C) of 2010.

The said MOU reads as under:

1. "That First Party has agreed to pay to the Second Party, all its previous outstanding dues, which is to tune of Rs.92,262/- (Rupees Ninety One Thousand Two Hundred and Sixty Two only) accumulated till 30.06.2010. Consequently the First Party has paid a sum of Rs.48,000/- (Rupees Forty Eight Thousand Only) vide cheque bearing no.143887 dated 30.06.2010 drawn at UCO Bank, Ambala City at the time of signing of this MOU and further assured and undertakes to clear rest of the outstanding dues of Rs.43,262/- (Rupees Forty Three Thousand Two Hundred and Sixty Two only) in two equal installments by 30.07.2010.

2. That First Party also agreed to pay the monthly subscription fee of a sum of Rs.44,000/- (Rupees Forty Four Thousand Only) inclusive of service tax

on the basis of fresh subscription agreement executed by both the parties w.e.f. 01.04.2010.

3. First Party has agreed to furnish its Subscriber Line Report as stipulated in TRAI's regulation(s)
4. That it is hereby made clear by Second Party that Second Party shall have all the rights to take appropriate legal action against First Party, in case of any default in making assured payment, as per the terms & conditions of Subscription Agreement. It is also agreed that in case any type of default Second Party reserve its rights to deactivate the signals of First Party, as per the procedure prescribed by regulations(s) issued by TRAI.
5. That the terms and condition of this MOU is irrevocable and shall be part and parcel of Subscription Agreement entered into between the First Party and Second Party i.e. Zee Turner Ltd. (Service Provider), subsequent, to this MOU.
6. That based upon the Subscriber Line Report (SLR), submitted by First Party to Second Party in the event of up-gradation, the terms & conditions of the existing subscription agreement will also be reviewed and re-negotiated between both the parties, as & when required.

7. That as part of mutual settlement the First Party undertakes to withdraw pending case as mentioned hereinabove filed by the First Party against Second Party before the Hon'ble Telecom Dispute Settlement Appellate Tribunal (TDSAT) on the next date of hearing i.e. 07.07.2010."

2. Pursuant to the said MOU the petitioner withdrew the aforementioned Petition No.167(C) of 2010. The said MOU came into force with effect from 1.4.2010, in terms whereof the petitioner was to pay the subscription fees of Rs.44,000/- per month including the service tax.

3. According to the petitioner, it had been paying the due subscription fees in terms thereof but despite the same the respondent served a notice purported to be under Regulation 4.1. of the Telecommunication (Broadcasting & Cable Services) Interconnection Regulations, stating :

"We regret to state that you have not cleared your outstanding dues in spite of repeated requests. It appears that you have been avoiding to clear your outstanding dues without any reason. As per our statement of accounts you are under an obligation to clear your outstanding dues amounting to Rs.1,17,680/- (Rs.One Lac Seventeen Thousand Six Hundred & Eighty Only) (inclusive of September 2010 billing)

We hereby request you to contact our nearest Dealer/Regional office of the Company and pay the above said dues within 3 days from the date of this letter. Please note that in the event you fail to comply with the tenor of this notice we shall be constrained to deactivate our signals as per the applicable statute.

You are requested to treat this communication as notice for deactivation of signals in terms of Clause 4.1 of Interconnection Regulation dated 4th September, 2006 issued by Telecom Regulatory Authority of India.”

4. A public notice was also issued in two newspapers on the same date on the alleged ground of non-payment of dues.

This petition was filed on 21.10.2010 praying, inter alia, for the following reliefs:

(i) Direct the petitioner to withdraw its Notice/Letter dated 27.9.2010;

(ii) Direct the respondent to reconnect the signals to the Signals to the Cable TV Network of the Petitioner;

(iii) Direct the Respondent to supply the copy of Subscription Agreement for the year 2010-2011, which was signed between the parties;

(iv) Direct the respondent to maintain continuous and uninterrupted supply of its signals to the Cable TV Network of the Petitioner;

(v) Direct the respondent to reconcile the accounts with the petitioner.

(vi) Direct the respondent to give adjustment for the period for which the supply of signals to the Cable TV Network of the petitioner was disconnected.”

5. The respondent in its reply, however, contended:-

(i) The petitioner is not a proprietorship concern but a partnership firm, the other partner being one Shri Tarun Kapur running a business in distribution of cable TV under the name and style of Kapur Cable Network.

(ii) They operate from the same headend having same address. The said Kapur Cable Network had entered into an agreement with the respondent herein on or about 29.6.2010 in terms whereof it made itself liable to pay a sum of Rs.3,32,002/- on account of receipt of supply of signals of the channels of the respondent for the entire town of Ambala and adjoining areas.

(iii) On the same day i.e. on 27.9.2010 inter alia on the premise that both the petitioner as also the said Kapur Cable Network had

defaulted, notices under Regulations 4.1. and 4.3 had been issued but the petitioner alone had approached this Tribunal so as to enable it to obtain restoration of supply of signals for the purpose of retransmission thereof to the subscribers both of the petitioner as also the said Kapur Cable Network.

(iv) The petitioner had been supplying signals in the entire town of Ambala and the surrounding areas upon obtaining an interim order of this Tribunal.

(v) Even during the pendency of this petition the petitioner has committed piracy.

In support of the said contention the respondent has annexed with the reply a copy of the CD.

6. The petitioner in its rejoinder, however, denied and disputed the same contending:

“The Respondent did not even mention about the MOU dated 30.6.2010 in which the petitioner has clearly mentioned that the petitioner is a proprietorship concern and this fact was duly verified by the respondent at the time of entering into MOU. It is again submitted that the petitioner is a proprietorship concern and has nothing to do with Kapoor Cable Network. It is vehemently denied that the offices of the two MSOs i.e. the petitioner and Kapoor Cable Network are operating from the same place. It is very humbly submitted that the addresses of the above two MSOs are different as can be seen and verified from the Subscription Agreements, which have been annexed by the

respondent along with its reply. It is again submitted that the petitioner and Kapoor Cable Network are two different concerns and the petitioner has nothing to do with Kapoor Cable Network and hence in view of the above when the petitioner has nothing to do with Kapoor Cable Network, the petitioner is not liable to pay anything on behalf of the Kapoor Cable Network and if the respondent has any grievance against Kapoor Cable Network then the respondent can take appropriate actions against it. It is also submitted that the petitioner has not been operating in any of the areas in which the petitioner is not authorized to operate. It is submitted that the CD produced by the respondent is a manipulated CD, which has been created by the respondent in order to cook up reasons to disconnect the signals to the Cable TV Network of the petitioner in order to favour the Rival Cable TV Network i.e MAK (erstwhile Ambala Communication Network) which is the favourite Cable TV Network of the respondent and to the best knowledge of the petitioner the respondent now has substantial stake in the same through it's shall companies or proxy people. Even otherwise, from Clause Nos.3 & 4 at page No.55 it will be clear that the respondent had entered into MOU with Kapoor Cable with an understanding that Ambala Cable Network will not be switched on, which has now been switched on in the new name of MAK. Further, from Clause 4 it is clear that the respondent has bound the said Kapoor Cable Network in such a way that it cannot move even an inch without the consent of the respondent."

In regard to the public notice it was contended:

“It is further submitted that the public notices, which the respondent has annexed with its reply have never been received by the petitioner as circulation of both the newspapers in which the public notices have been published is either zero or very less in the City of Ambala as they are published from another place and meant for circulation there e.g. Hari Bhumi is published from Rohtak and has negligible circulation in Ambala City. Insofar as the other newspaper is concerned, the petitioner has not been able to find out its place of publication which from its name looks like a Advertisement Bulletin and not a newspaper meant to cater to a small local area.”

7. By reason of an order dated 22.10.2010, this Tribunal while passing an interim order in favour of the petitioner noticed the apprehension of the respondent in the following terms:

“Ms. P.M. Singh states that the petitioner is, in fact, a partnership concern, of which Mr. Kapoor is one of the partners. According to the learned counsel, the said Mr. Kapoor is a partner of another network-M/s Kapoor Cable, from whom the respondent owes a sum of Rs.6.86 lacs.

The apprehension of the respondent is that upon obtaining restoration of signal, the petitioner shall

supply signals to the aforementioned Kapoor Cable. We need not go into the aforementioned question at present inasmuch as there cannot be any doubt or dispute that the petitioner must confine its activity of transmission of signals to its own customers. We, therefore, direct that the petitioner either directly or indirectly shall not transmit the signal of the channels of the respondent to any other cable operator. The petitioner shall also continue to make the monthly payments. The payments by the petitioner shall be without prejudice to its rights and contentions.”

8. Indisputably in terms of the said interim order, the petitioner deposited the aforementioned amount.

9. This Tribunal by an order dated 22.11.2010 framed the following issues:

(i) Whether the Public notice issued by the respondent in terms of clause 4.3 of the telecommunication (Broadcasting & Cable Services) Interconnection Regulation, 2004, is valid ?

(ii) Whether the petitioner has indulged in transmitting the signals of the respondent's channel beyond the specified area illegally and especially the subscribers of the M/s. Kapur Cable Network?

(iii) Whether the connectivity declared by the petitioner is correct?

(iv) Whether the petitioner had been making payments of the stipulated amount of the subscription fee?

(v) What is the actual amount of subscription charges due to the respondent from the petitioner?

(vi) What relief, if any, the petitioner is entitled to?

The petitioner in support of its case has examined its so called proprietor Shri Tilak Raj.

In support of its case the respondent has examined its Manager (Sales)- Shri Manjeet Singh.

10. Mr. Bhagat, the learned counsel appearing on behalf of the petitioner would contend:

(i) The public notice having been issued in two local newspapers i.e. in 'Haribhumi' which is published from Rohtak and 'Homepages' which is published from Hissar, it must be held, they having limited circulation, the purpose and object of publication of such notice has not been satisfied.

(ii) The Kapur Cable Network having entered into a separate agreement with the respondent on or about 29.6.2001, it is not

correct in contending that the petitioner was bound to pay the subscription fee payable by the said firm.

(iii) The petitioner having entered into another agreement with Ambala Communications Pvt. Ltd. now known as `MAK' which is the distributor of the respondent for the entire town of Ambala, the impugned notices had been issued so as to create a monopoly in favour of the latter, which is its favourite distributor.

(iv) The purported affidavit of the petitioner being dated 11.1.2010, whereupon the respondent places strong reliance and in terms whereof the petitioner had agreed to pay the dues of M/s Sandhu Cable, the same must be held to be an outcome of coercion as it was stated therein that unless the petitioner paid the dues of `Sandhu Cable' of which the aforementioned Tarun Kapur was one of the partners, it would not be supplied any decoder.

(v) From the statement of account issued by the respondent with its letter dated 23.8.2008, it would appear that a sum of Rs.1,26,679.21 was said to be due, whereas the respondent in its notice dated 27.8.2010 stated the dues to be Rs.1,17,680/-, and thus no reliance can be placed thereupon.

(vi) The respondent neither could have relied upon the CD which has been filed with the reply nor the one wherewith the petitioner's witness was confronted and the same must be held to be inadmissible in evidence being beyond the pleadings as also having regard to the fact that the requirements of the provisions of Sections 65A and 65B of the Indian Evidence Act have not been

satisfied and in that view of the matter it must be held that the allegation of piracy cannot be said to have been proved.

11. Ms. Pratibha M. Singh, the learned counsel appearing on behalf of the respondent, on the other hand, urged:

- (i) Although notice under Regulation 4.1. and the public notice under 4.3 of the Regulations were issued, both against the petitioner and the said Kapur Cable Network, only the petitioner has approached this Tribunal so as to enable it to transmit signals to the subscribers in the entire town of Ambala through the network of Kapur Cable Network.
- (ii) From the CD filed by the respondent, it would be evident that the viewing card was that of the petitioner and the area in which the retransmission of signals of the channels of the respondent was being carried out fell within the areas of M/s Kapur Cable Network.
- (iii) From the said CD it would furthermore appear that retransmission of signals was done in Jagadari Gate and Sector 8 which were not within the area of operation of the petitioner.
- (iv) The fact that the petitioner and the said Tarun Kapur had been working from the same office as also they have the same headend would not only appear from the admissions made by the petitioner himself and the cause

title of the petition as also various affidavits but also from the First Information Report lodged by one Manoj Kumar for the alleged acts of piracy of the signals of Sun TV.

- (v) The credibility of the witness of the petitioner in the facts and circumstances of this case must be held to be doubtful.

12. Has the petitioner been retransmitting signals from the headend of the Kapur Cable Network is the principal question. Kapur Cable Network entered into a subscription agreement with the respondent on or about 29.6.2010. It's area of operation has been shown to be the entire town of Ambala as also several villages surrounding the same, namely:

All Ambala City Corporation & Village Below

Balana Village

Village Dhaurara

Village Jandli

Village Kalu

Village Sadnda

Village Jalwara

Village Naseerpur

Village Mandaur

Village Handesara

Village Siyhawala

Village Ramdas Nagar

Village Sultanpur Kher

Village Naya Gaun

Village Kalu Vajra/Kalera

Village Dhoolkot

All the above villages are situated in the State of Punjab i.e.beyond the Ambala Cantonment Area.

13. We may also notice, in this behalf, the area of operation of the petitioner as stated in the agreement which is said to have been entered into by and between the parties hereto.

“Kapada Market, 2. Cuth Majrii, 3, Prem Nagar, 4. Sector-7, 5.Direct Public Line 6. Sector-9 and Sector 10, 7. Baldev Nagar.”

14. The petitioner in the cause title of this petition, the affidavit in support thereof, the affidavit in support of the rejoinder and evidence, has stated its office address to be situated at 417, Bhagat Singh Market, Ambala City.

15. The address of the said Kapur Cable Network is also the same. In fact the petitioner’s witness in his examination also accepted the same to which we will refer to a little later.

16. The petitioner during pendency of this proceeding did not question the correctness of the said address. Even in his cross examination he stated:

“For the renewals and new connections I conduct the negotiation with the operators along with my state head Mr. Subhash Thakur.

I had negotiated this agreement with Maha Laxmi.

We do refer to the checklist which has been placed over the subscription agreement and there are certain things which are mandatory which we take from the operators before signing the subscription agreement and if any of those are not available then we take affidavit or declaration for submitting the same later. For these affidavit or declaration we refer to the standard formats which are in our files.

The amount mentioned in the agreement is the negotiated amount.

We conducted the area analysis and SLR is attached with the agreement.

Q: Was it a new sale or renewal?

A: Maha Laxmi cable was earlier Sandhu cable in which Mr. Narender Saini, Mr. Tarun Kapoor, Mr.

Mittal and about six – seven were partners including these. There were disputes inter-se the partner because of which the control room of Sandhu cable was shut down. The equipment from there was shifted by Mr. Tarun Kapoor and Mr. Tilak Raj to the present premises at 400-400A, Bhagat Singh Market from which currently Maha Laxmi Cable network is working. Both of them came to us. They said that due to dispute in Sandhu cable it has shut down and they asked for new boxes. We asked them who will clear the outstanding of Sandhu cable and also told them to use the boxes of Sandhu cable. They then told us that some of the boxes have been taken away by the other partners and they wanted new boxes. They then agreed to pay all the charges even for the hardware and told us they will clear the outstanding of Sandhu cable by giving post dated cheques. Then Mr. Tilak Raj gave an affidavit that Mr. Tarun Kapoor is his partner and that he will clear the outstanding of Sandhu cable. Then we issued them new boxes.

It is correct to say that Mr. Tilak Raj was not the partner in Sandhu Cable.

Q: Were there two separate agreements with Mr. Tilak Raj and Mr. Tarun Kapoor?

A: Yes. The agreements with Tilak Raj and Tarun Kapoor were entered into separately in June, 2010. This was because of the reason that due to violation of territory by Mr. Tilak Raj, the other network

Ambala Communication Pvt. Ltd. which was paying us Rs.3,37,000/- (approx.) stopped paying us. Ambala Communication told us that Zee should ensure that the area violation by Mr. Tilak Raj should be stopped. Infact Ambala communication gave us a letter of 19.06.2010 stating that 65% of their connections had shifted to Maha Laxmi. When we confronted Mr. Tilak Raj and told him to remove his cables from Ambala communication area, he told us that he will pay for the entire area. Accordingly we told them that we will increase the payment of Maha Laxmi to Rs.3,37,000/-. In response Mr. Tilak Raj said that let the agreement with Maha Laxmi continue as it is as he wanted to obtain signals from other broadcasters by showing the agreement with Zee Turner at Rs.44,000/-. Therefore the negotiation took place for the area of Ambala communication area and they signed the agreement in the name of Kapoor Cable for Rs. 3,32,002/-. Therefore there were two agreements.

(The letter dated 19.06.2010 has been produced by the witness and copy of the same is marked as **RW1/P1.**)

Q: Can you point out from your affidavit where it contains what you have said above?

A: It is not in the affidavit but it is written in the affidavit that Maha Laxmi and Kapoor Cable are same, their address is the same, the area of Kapoor is serviced by Maha Laxmi, Kapoor cable has no network in the ground and from day one the area of Kapoor is serviced by Maha Laxmi.”

17. Before the Assistant Registrar, however, at the fag end of his cross examination Mr. Tilak Raj contended that his address has wrongly been shown in the petition.

18. The respondent in support of its contention has produced a large number of documents including the driving license of Mr. Tarun Kapur, the registration certificate issued to him from head post office of the Ambala City, as also the letter of Shri Tarun Kapur in regard to his area of operation which has become a part of the agreement. Even in his application for registration the petitioner has shown its address as 400/401, Bhagat Singh Market, Ambala City.

19. Not only the same, the respondent has brought on records a First Information Report lodged by one Shri Manoj Kumar on 8.12.2010 as also a seizure memo showing seizure of various equipments by the Officer in charge of the Ambala Police Station to show that piracy was being conducted by the petitioner from Shop No.417 of Bhagat Singh Kapada Market, Ambala City.

20. The petitioner moreover has affirmed an affidavit on or about 11.1.2010, wherein he stated as under:

1. "That I am partner of M/s Maha Laxmi Cable Network running my cable network business in the Area of Ambala City.

2. That one of our partner Mr. Tarun Kapoor was partner in Sandhu Cable Network.
3. That Maha Laxmi Cable Network will be liable of all outstanding upto 31 December 2009 of M/s Sandhu Cable Network and I will pay the post dated cheques for the same Zee Turner Ltd.
4. That in case if Zee Turner Ltd. received the outstanding payment of Sandhu Cable Network from other partners of Sandhu Cable Network, then the same shall be adjusted on a/c of Maha Laxmi Cable Network.
5. We will pay over monthly subscription fee regularly and time to Zee Turner Ltd. and shall abide by all TRAI regulations.

Deponent

Verification

Verified that the contents of my affidavit are true and correct and nothing has been concealed therein:-

Deponent

Chandigarh”

21. We have noticed heretobefore that according to the petitioner he was forced to affirm the said affidavit and pay the dues of the aforementioned Sandhu Cable Network.

22. It has not been denied or disputed that the aforementioned Shri Tarun Kapur was one of the partners of the said S. Sandhu Cable network. It is furthermore not in dispute that the said partnership for one reason or the other was dissolved and the petitioner purchased the equipment thereof. The said affidavit has been acted upon.

23. The petitioner had filed a petition before this Tribunal earlier. It, in the said petition as also in the present petition, did not raise any contention that it had no concern with the aforementioned Sandhu Cable nor had it any concern with M/s Kapur Cable Network. The petitioner had also not questioned the genuineness or otherwise of the said affidavit. In fact the genuineness of the said affidavit has been accepted.

24. In that view of the matter it is difficult to accept the contention of Mr. Bhagat that the said affidavit was an outcome of coercion and/or the petitioner had nothing to do with the said M/s Kapur Cable Network.

25. Mr. Tilak Raj, however, in his cross-examination made an attempt to explain and/or resile from the said admission, stating:

“Witness is shown a original declaration dated 11.01.10 and asked to confirm his signatures. Witness has confirmed the signature and a copy of document is placed on record and is marked as PW1/R1.

I have been involved in the cable business since 12 years.

Initially I started under the name of Balaji Cable and in January, 2010 Maha Laxmi Cable was formed.

It is a proprietary concern.

Sandhu Cable belongs to Mr. Narendar Singh. I know Mr. Tarun Kapoor only because he is in the same line and he was also my partner.

The partnership with Tarun Kapoor was in the name of Shiva Cable Network.

The office of Shiva Cable was in Manav Chowk.

The partnership with Tarun Kapoor was for a period of 2 years.

In Maha Laxmi Cable Tarun Kapoor was never a partner.

Tarun Kapoor does his business in the name of Kapoor Cable Network.

Q: Did you make an incorrect statement in the affidavit at Page No. 53 that Tarun Kapoor is your partner?

A: When I went to collect boxes from Zee they told me that there is a huge outstanding of Sandhu cable and if you clear that outstanding then we will give the boxes so I gave this affidavit. Zee said that we cannot add Sandhu cable's name and outstanding just like that so I said that Tarun Kapoor is my partner.

Q: You have just now said that Sandhu Cable is not connected to Tarun Kapoor so then what is the connection between the two?

A: I did not say that Tarun Kapoor is not connected to Sandhu cable I was asked who is the owner of Sandhu cable and I had answered. The line of Sandhu cable was run by Tarun Kapoor and he was given the signing authority by Sandhu cable.

Q: So therefore Tarun Kapoor was running Sandhu cable and Kapoor cable?

A: No. He only had signing authority for Sandhu cable and he used to run the line of Sandhu cable.

Q: What is the address of Maha Laxmi?

A: 400-400A, Bhagat Singh Market, Ambala City.

Q: Who's office is at 417 at Bhagat Singh Market?

A: Kapoor Cable run by Tarun Kapoor.

Q: Do you still stand by the position that there is no relationship between you (Maha Laxmi) and Kapoor cable?

A: Yes.

26. At that point of time the petitioner was confronted with a large number of documents including the driving license of Shri Tarun Kapur and other documents containing 12 pages which we have noticed hereto before. He identified the signature of Tarun Kapur. He also identified the signature of Shri Tarun Kapur in the agreement as also original hardware loan agreement and maintenance agreement of Kapur Cable Network which was marked as PW 1/R-4 and PW 1/R-5.

27. So far as the first information report and seizure memo are concerned, he stated the following:

"Q: I put it to you that you are blatantly making a false statement because the said address is also there in the FIR filed against Maha Laxmi Cable by Sun 18 for Colours Channel?

A: They must have given a wrong address. Even the raid is wrong because I have an agreement with Sun 18.

Q: Is it correct that the seizure of all the equipment of Maha Laxmi Cable as contended in the FIR took place from 417, Bhagat Singh market?

A: No. The seizure took place at 400-400A.

The witness is shown the copy of seizure memo and FIR and he admits the same as being correct, however, the witness states that the address stated therein is wrong. A copy of the document running into 6 pages is marked as PW1/R10. (Counsel for the petitioner objects for this being beyond pleadings)

Q: Please identify your signatures at Page Nos. 15&16 of the paper book?

A: Yes. They appear at Points A1,A2 and A3.

Q: Please identify your signatures at Page Nos. 100&101 of the paper book?

A: Yes. They appear at Points A4 and A5.

Q: I put it to you that you and Kapoor cable are one and the same. You are servicing the entire area of Kapoor cable?

A: It is denied."

28. We have noticed heretofore that he had accepted Kapur Cable Network also operates from 417, Bhagat Singh Market of Ambala City. Curiously enough when he was confronted with his affidavit, he stated:

"Q: I put it to you that Kapoor Cable and Maha Laxmi Cable are one and the same because you have given the address of Maha Laxmi Cable in your evidence as 417, Bhagat Singh Market, Ambala City.

A: This may be a mistake.

Q: Did you not read the affidavit before signing it?

A: I read it but I did not concentrate on the address."

29. It may also be placed on record that he has also admitted a large number of documents with which he was concerned vis-a-vis Tarun Kapur at the said address. So far as his area of operation is concerned, he however stated as under:

"Q: Which are the territories where you are authorized to distribute respondent's channels?

A: I do not know because I do not have a copy of the agreement

Witness is shown the original subscription agreement dated 01.04.2010 along with the SLR of the said agreement and identifies the same to be correct. A copy of same running into 14 pages is marked as PW1/R6."

30. Despite his admission that he had executed the said agreement, he denied the contents thereof, stating :

"Q: Please look at Page 8 of PW1/R7 and identify the signature of the witness who has signed at Point Z?

A: I cannot identify the signatures.

This was not signed at Zee office. It was signed in my shop. I do not know who is the second witness. I also do not know who was present with me when this agreement was signed.

On behalf of Zee either Mr. Subhash Thakur or Mr. Manjit Singh must have been there when the agreement was signed.

Witness is shown the original of Challan cum issue notice dated 13.08.2010 and he identifies signature

of Mr. Manjit Singh at point Z1. A copy is marked as PW1/R8.

The outstanding in October, 2010 according to me is approx. Rs.36,000/-."

31. Although he is an experienced cable operator, in regard to his area of operation, he purported to have stated :

"As of now Sector -8 is not within the authorized territory.

I do not give signals in Sector-8.

Q: Please specify some of the colonies of Ambala City Corporation?

A: Sectors-7,9,10, Prem Nagar etc. I cannot list all the colonies.

Jagadhari gate is part of Ambala City Corporation.

I do not provide signals in Jagadhari gate.

I do recognize the areas of Ambala City.

The counsel for the respondent has opened the CD filed by the Respondent along with the Reply at Page No. 71 of the paper book. The same is loaded on a laptop and the witness has been asked to identify the area shown in the said CD.

The witness says he cannot recognize the area. He is also shown the residence of Mr. H.S. Khurana (HSEB).

Q: Is Mr. H.S. Khurana your customer?

A: No.

The witness is then shown the Shani Dev Mandir and Sector-8 of Ambala City and he confirms the same.

Q: Is Mr. G.C. Verma (IAF) your customer?

A: No.

(The CD has been put back at Page No. 71.)

Witness is shown another recording of Residence of G.C. Verma, No. 839, Sector-8

(Counsel for the petitioner objects as the CD is not part of Record)

Q: Is he not your customer?

A: No.

Q: The VC No. 01500157670 flashing is of Maha Laxmi cable. Am I right?

A: It may be of the petitioner. We can compare it with the number in the Hardware agreement.

Q: I put it to you that you are serving the entire area under Kapoor cable and this is evident from the fact that your signals are being found in various areas covered by Kapoor cable agreement?

A: No.

The cable bearing Maha Laxmi Cable name shown to me in the recording belongs to the petitioner. 013.

Q: I put it to you that this cable is found in Jagadhari gate area of Ambala City?

A: How can you say that this is Jagadhari gate area. I do not agree.

The CD which was confronted to the witness is marked as PW1/R9. A copy of the same is to be supplied to the petitioner."

32. We would now consider the evidence of Shri Manjeet Singh, the witness examined on behalf of the respondent. He stated:

“For the renewals and new connections I conduct the negotiation with the operators alongwith my state head Mr. Subhash Thakur.

I had negotiated this agreement with Maha Laxmi.

We do refer to the checklist which has been placed over the subscription agreement and there are certain things which are mandatory which we take from the operators before signing the subscription agreement and if any of those are not available then we take affidavit or declaration for submitting the same later. For these affidavit or declaration we refer to the standard formats which are in our files.

The amount mentioned in the agreement is the negotiated amount.

We conducted the area analysis and SLR is attached with the agreement.

Q: Was it a new sale or renewal?

A: Maha Laxmi cable was earlier Sandhu cable in which Mr. Narender Saini, Mr. Tarun Kapoor, Mr. Mittal and about six – seven were partners including these. There were disputes inter-se the partner because of which the control room of Sandhu cable was shut down. The equipment from there was shifted by Mr. Tarun Kapoor and Mr. Tilak Raj to the present premises at 400-400A, Bhagat Singh Market from which currently Maha Laxmi Cable network is working. Both of them came to us. They said that due to dispute in Sandhu cable it has shut down and they asked for new boxes. We asked them who will clear the outstanding of Sandhu cable and also told them to use the boxes of Sandhu cable. They then told us that some of the boxes have been taken away by the other partners and they wanted new boxes. They then agreed to pay all the charges even for the hardware and told us they will clear the outstanding of Sandhu cable by giving post dated cheques. Then Mr. Tilak Raj gave an affidavit that Mr. Tarun Kapoor is his partner and that he will clear the outstanding of Sandhu cable. Then we issued them new boxes.

It is correct to say that Mr. Tilak Raj was not the partner in Sandhu Cable.

Q: Were there two separate agreements with Mr. Tilak Raj and Mr. Tarun Kapoor?

A: Yes. The agreements with Tilak Raj and Tarun Kapoor were entered into separately in June, 2010.

This was because of the reason that due to violation of territory by Mr. Tilak Raj, the other network Ambala Communication Pvt. Ltd. which was paying us Rs.3,37,000/- (approx.) stopped paying us. Ambala Communication told us that Zee should ensure that the area violation by Mr. Tilak Raj should be stopped. Infact Ambala communication gave us a letter of 19.06.2010 stating that 65% of their connections had shifted to Maha Laxmi. When we confronted Mr. Tilak Raj and told him to remove his cables from Ambala communication area, he told us that he will pay for the entire area. Accordingly we told them that we will increase the payment of Maha Laxmi to Rs.3,37,000/-. In response Mr. Tilak Raj said that let the agreement with Maha Laxmi continue as it is as he wanted to obtain signals from other broadcasters by showing the agreement with Zee Turner at Rs.44,000/-. Therefore the negotiation took place for the area of Ambala communication area and they signed the agreement in the name of Kapoor Cable for Rs. 3,32,002/-. Therefore there were two agreements.

(The letter dated 19.06.2010 has been produced by the witness and copy of the same is marked as **RW1/P1.**)

Q: Can you point out from your affidavit where it contains what you have said above?

A: It is not in the affidavit but it is written in the affidavit that Maha Laxmi and Kapoor Cable are same, their address is the same, the area of Kapoor is serviced by Maha Laxmi, Kapoor cable has no

network in the ground and from day one the area of Kapoor is serviced by Maha Laxmi.”

33. So far as the publication of notice in two newspapers is concerned, the original complete newspapers have been produced on the asking of the counsel for the petitioner.

In his cross-examination the witness stated:

“Q: Do you have the original complete newspaper?

A: Witness produces the original newspaper pages 1, 2, 5 and 6. The Public notice appears at Page No. 6.

(The original newspaper is taken on record and marked as **RW1/P2.**)

The counsel for the petitioner demands from the witness the bill which was annexed with the newspaper regarding giving of advertisement in the newspaper The Homepages.

The witness does not show the bill and states that it is company policy not to show the bill and also since the counsel had requested for the original newspaper and the same has been given to the learned counsel for petitioner.

Q: I put it to you that this newspaper The Homepages has no circulation in Ambala?

A: It has circulation of approx 3,000.

Q: It is written on the newspaper that it is published in Hisar?

A: It is printed in Hisar and circulated in Ambala also.

Q: I put to you that Vernacular newspaper in Hindi has no circulation in Ambala?

A: The circulation is more than 1500 copies.

(The original newspaper is taken on record and marked as RW1/P3.)

Q: Is it correct that it is published in Rohtak and it is a Rohtak edition?

A: It is printed in Rohtak, circulated all over Haryana and it also has a page on Chandigarh.”

Mr. Manjeet Singh in his evidence fully supported the case of the respondent as contained in its reply.

34. He also proved the CD which was a part of the reply. It must, however, be stated that the second CD produced by the respondent is beyond the pleadings.

35. Even otherwise the CDs cannot be said to have been proved in accordance with the provisions of Section 65B of the Indian Evidence Act.

36. Submission of Mr. Bhagat that PW-1 Tilak Raj has been confronted with large number of documents which were not the subject matter of pleadings being not correct cannot be accepted. It is permissible in law to confront a witness in order to show that he had been making wrong statements before a Court of law.

37. In T.M. Mohana vs. V. Kannan reported in AIR 1984 Madras 14 it has been stated:

“8. Thus it is seen from the provisions of O. 8 R. 1 (2) and (6) O. 8 R. 8-A (1) and (3) and Order 13, Rule 2 (2) C.P.C. that at every stage at which the defendant is called upon to produce the documents, an exception is always made with reference to documents produced for the cross-examination of the plaintiff's witnesses or the cross-examination of the witnesses of the other party or in answer to a case set up by the plaintiff subsequent to the filing of the suit or with a view to refresh memory. In other words, the obligation to produce the documents relied upon by the defendant at the stages contemplated under O. 8, R. 1 (2), O. 8 R. 8-A (1) and by both parties under O. 13 R. 1 C.P.C. has been done away with in all those cases with reference to documents produced for cross-examination. That would mean that a defendant in the suit confronting the plaintiff's witnesses, as in

this case, need not disclose the document in the list or produce the document at an anterior point of time or even seek and obtain the leave of Court for tendering such a document in the course of the cross-examination of the witness of the other side.”

[see also M/s Phonographic Performance Ltd. vs. M/s. Radio Mid Day (West) India Ltd., Mumbai, 2010 (DL1) GJX 0758-DEL]

38. An overwhelming amount of evidence has been brought on record to show that the petitioner and the said Kapur Cable Network had been operating from the same premises.

39. We had no doubt in our mind that keeping in view the documents brought on record and in particular the certificate issued by the post master on the basis of the application filed both by the petitioner and the said Kapur Cable Network that they had been operating from the same premises.

40. The petitioner has been supplying signals in terms of an order passed by this Tribunal.

45. If during pendency of this petition he has committed acts of piracy and/or otherwise has suppressed material facts from this Tribunal, it will be entitled to recall its order.

An area of operation carries with it a sanctity.

46. In Verma Cable Network through its authorized representative Mr. Govind Mehra vs Zee Turner, Petition No.45C of 2006 disposed of 29.3.2006, this Tribunal held as under:

“8. Regulation 4 of The Telecommunication

(Broadcasting & Cable Services) Interconnection Regulation 2004, as contended by the first Respondent, does empower the signal supplier to disconnect the signals if the receiver of signals has been transmitting the same unauthorisedly to the detriment of the commercial interests of the signal supplier. This is only an enabling provision and is not a mandatory provision. It is open to the signal supplier concerned like Respondent No.1 herein, to disconnect the signals on the ground of unauthorized transmission if it so desires or not to do so for reasons of its own by condoning the act of such service provider. In the instant case, it is the contention of the Petitioner that from the beginning of its business relationship with first Respondent it has been supplying signals not only in Warana Nagar but at a few places in Kolhapur and it was within the knowledge of the first Respondent to which first Respondent did not object.”

47. Yet again in Sree Communications & Anr. vs. Star Den Media Services Pvt. Ltd. in Petition No. 262 of 2009 decided on 10.12.2009, this Tribunal opined:

“The area of operation of the petitioner was Ongole. We would assume for the sake of argument (although we have serious reservations on the submissions made by Mr.Navin Chawla that Regulations permit such expansion of area even without any authority from the broadcaster) is permissible under the Regulations. Expansion of

area of operation, however, would not mean operating in two different areas situated 52 kilometers away from each other. Each area of operation by and large should be a separate compact area.”

48. Recently this Tribunal in *Wire and Wireless India Ltd. vs. MSM Discovery Pvt. Ltd.* Petition No. 29(C) of 2010 held:

“The question as to whether the ‘territory’ contained in the agreement has any real significance or not may now be considered. Apart from the fact that in a case of this nature, the extent of territory specifically mentioned in the agreement vis-à-vis a situation, where the entire town or area or even a surrounding areas are mentioned would carry different meanings.

The petitioner raised a contention that all the Den Cable Operators had joined its network in October, 2009 and December, 2009, who operate within a radius of 1.5 kilometers from the centre of the town. In a given situation of the present nature where there may be a large subscribers within a distance of 1.5 kilometers, the same in our opinion cannot altogether be ignored.”

49. The petitioner, therefore, obtained an order from this Tribunal on suppression of material facts.

50. If it was a partnership concern it should have stated so in no uncertain terms. If it had been operating from the same address and had been operating from the same headend where the Kapur Cable Network has headend, he should have stated so in clear terms.

51. The very fact that the postal registration certificate of both the petitioner and Kapur Cable Network point out the same address, the same must be taken to be the place where the headend of the petitioner as also the Kapur Cable is situated, keeping in view the Section 3 of the Cable TV Networks Act, 1995 and Cable TV Network Rules, 1994.

52. It is now a well settled principle of law that no person should be allowed to take advantage of its own wrong. No suitor can use a legal forum for achieving a purpose to which he is not authorized by law.

53. The petitioner is guilty of suppression of material facts from this Tribunal. It has sought to change its stand so far as his address is concerned only at the fag end of his deposition.

54. Even in the First Information Report allegedly he has been committing acts of piracy not only in respect of signals of the channels of the respondent but of some other broadcaster also.

55. It is now a well settled principle of law that a witness can be confronted with a document, although the same has not been placed on record earlier.

56. It has been established beyond all reasonable doubts that the petitioner and the aforementioned Kapur Cable Network had been operating from the same address. It is difficult to conceive that two MSOs having a wide area of operation are said to have the same headend. Sufficient evidence has been brought on record, thus , that Kapur Cable Network had some sort of connection with the petitioner's network. We, therefore, are of the opinion that the petitioner is not entitled to any equitable relief from this Tribunal.

57. We, however, agree with Mr. Bhagat that keeping in view the provisions of Section 65B of the Indian Evidence Act, the CDs filed by the respondent have not been proved but that would not mean that we would totally discard the oral evidence in this behalf.

58. Moreover, the area of operation of the petitioner was limited; whereas, M/s Kapur Cable Network had its area of operation in the entire town of Ambala.

59. The petitioner was confronted with the CD. He accepted that the cable belonging to him can be noticed.

60. Learned counsel for the respondent as indicated herein before had already conveyed an apprehension of the respondent on the date of preliminary hearing of the matter itself. So far as the issue of public notice is concerned, having regard to the fact that the newspapers in question have sufficient circulation, the same subserves the legal purpose and takes a back seat, but even otherwise we are not inclined to grant any relief to the petitioner on that ground alone.

61. For the aforementioned reasons, this petition is dismissed with liberty to the respondent to take such action as against the petitioner which are available to it in law. The petitioner must also pay and bear the cost of this petition to the respondent. Advocate's fee is assessed at Rs.50,000/-.

(S.B. Sinha)

Chairperson

(P.K. Rastogi)

Member

May 12, 2011

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